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To

THE HONORABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND IN PARLIAMENT ASSEMBLED

THE HUMBLE PETITION OF THE UNDERSIGNED, BEING THE COMMITTEE OF THE BRITISH INDIAN ASSOCIATION,

SHEWETH ;

Your petitioners learn from the published proceedings of the Legislative Council of India of the 27th December last, that the scheme of amalgamation of the Supreme and Sudder Courts, proposed by the Indian Law Commissioners sitting in London, and the reconstitution of the Country Courts, is not to be decided upon nor considered, with a view to adoption, by the local legislature.

Your petitioners are also credibly informed, that the Judges of Her Majesty's Supreme Court have strongly opposed, in written minutes, the scheme of amalgamation ; and your petitioners are aware, that a number of British residents in these provinces have deputed a special advocate and agent for the purpose of opposing the same scheme.

The Reports of the Law Commissioners and their appendices have, from the time of publication in this country, of course much interested and still engage the anxious consideration of your petitioners ; but the circumstances above adverted to impose on your petitioners the immediate duty of addressing your Hon'ble House upon the main question to which the labours and reports of the Commissioners relate, *viz.*, the reform of the judicial establishments in this country ; if only for the purpose of informing your Hon'ble House what is the conviction and settled opinion of (perhaps all, but certainly a large majority) of the intelligent and edu-

cated classes of the Native Community, as well upon the scheme proposed, as upon the efforts now made to alter, to frustrate or to delay the execution of that scheme.

Your petitioners consider it to be a fact long established, notorious and admitted by all (by all, at least whose opinions merit attention) without reserve, that the training for office of the judges of the Courts established by the East India Company is essentially defective.

They, and the class from which they are taken (scarcely selected) are assumed by their masters and by the advocates of the present system to have special qualifications, *viz.*, knowledge of the vernacular languages, and familiarity with the usages and habits of thought of the people.

This, however, when applied to the whole body or to any material portion of it, is but an assumption.

As a rule, neither of those special (and undoubtedly valuable) qualifications exist in a competent or tolerable degree, much less to an extent to afford any apology for the absence of other most important and vital qualifications for the responsibilities of the judicial office.

Were those boasted and assumed qualities possessed in the best and highest degree, they could (your petitioners submit,) but fit their possessors to decide, as jurymen, upon questions of fact, and certainly could not qualify them to make a right application of legal principles to those facts, in fine, to adjudicate rightly and according to any rational system of law.

In the system of judicature established by the East India Company, an extensive discretion has been, from the first, vested in the judges, with regard to rules of decision upon contracts and rights, somewhat analogous to that originally possessed by the English Courts of Equity; but, unlike the latter class of Courts, the East India Company's Courts cannot, even at this day, boast of any juridical body or system of law whatever.

This is the natural and necessary consequence of the entire absence of judicial training already referred to.

The experience and knowledge of this state of things (which your petitioners deem it sufficient to indicate or recite, as it is notorious) has made all but the official classes here, and a large number even of those classes, most anxious to witness some step towards a radical reform of the Indian Bench ; considering this to be the first great exigency in a general reform of the law and of the Courts.

Were the vicious *service*-method, of untrained judges, of unscientific and unsystematic decision, of loose and unjuridical reasoning, efficiently interfered with, your petitioners would look with hope and confidence to the progressive reform of a vast number of abuses connected with the administration of justice in this country.

Such an interference, such an efficient measure of relief, seemed to be guaranteed by the Reports of the Commissioners above referred to ; and your petitioners therefore hailed, with unmixed satisfaction, the recommendations of the Commissioners for the creation of "The High Court."

It has been proposed by objectors, that the Supreme Court should remain, in its integrity ; chiefly, in order to preserve entire existing privileges of one class of Her Majesty's subjects in these territories.

It is also said, that the retention of the present Supreme Court will not, in any way, interfere with the adoption of reforms in the law and procedure of the East India Company's Courts.

Your petitioners, however, while they disclaim any desire to trench upon the peculiar rights or privileges of any class of their fellow-subjects (if it be decided that such privileges can coexist with the general good, with what is best for *all*,) feel a strong conviction, that the adoption of the plan proposed by the objectors will, and must, prove

a serious, if not insuperable, obstacle to reforms which all desire and of which all acknowledge the necessity.

Nor, in the humble judgment of your petitioners, does the transfer or merging of the present Supreme Court into the High Court involve necessarily the abolition of the privileges of any class of suitors. Their privileges, if it be right that they should be preserved, may be retained, and in their integrity, whatever the general constitution of the Court.

What your petitioners desire, and believe to be essential, as the first step towards real reform of the judicial system here, is,—that there be no longer two wholly distinct Courts and divided systems, separately administered, but that, whatever differing kinds of laws it be deemed expedient to administer to the suitors for justice in these territories, or in Calcutta, the resort be to one Court or class of Courts: and especially, that the tribunal which is to be the High Court of appeal for all Courts, and to possess the power of controlling, guiding and correcting judges of all grades, be one and the same for the same territorial jurisdiction and for all classes commorant within that jurisdiction.

Not that your petitioners desire, or would be content to see, the large protective powers of Her Majesty's Court curtailed, whenever that Court may be a branch of or merged in the "High Court."

Your petitioners deeply feel (and have often, in representations to the local government and legislature, so expressed themselves) the necessity that exists—a necessity perhaps more obvious here than elsewhere throughout the British dominions—for some high and paramount safeguard of personal liberty, some all-powerful judicial shield and refuge from the tyranny of ignorance, of inexperience, of unwise zeal, in office.

Still less would your petitioners be satisfied, that the useful independence of the Royal judges be really interfered with

or be substantially less than it, now is. Indeed, your petitioners ask and hope, that this same independence of executive authority may be secured to every judge of the new Court, of whatever grade, and by whomever appointed. In saying this, your petitioners would be understood to advocate no isolation of power in judges, really antagonistic to the supreme responsible authority upon the spot,—nor to desire that any official, however high or untrammelled in his functions, should be virtually irresponsible for mischievous action, for any period of time. A representation by the local legislature, as a condition precedent to removal of a judge by the Governor General in Council, would at least be a guarantee against capricious or improper exercise of so important a prerogative, if delegated; especially, when the legislative body shall have been (as your petitioners fervently trust it soon may be) rendered more popular and more representative in character.

Such questions, although they arise out of, do not, your petitioners submit, fetter, and need not retard the measure of amalgamation. They are vitally important, and will doubtless be held worthy of separate discussion; whether the two Courts be or be not brought together under any scheme.

To proceed with the objections offered to amalgamation:

True it is, that barristers and jurists may be imported, or may be here appointed to the Bench of the Sudder Court, and that such appointments would be a benefit to suitors; but, your petitioners verily believe, it would be a benefit of a very inferior character to that recommended by the Commissioners, inasmuch as it is not, and cannot effect, so complete and useful a change of system as would be a measure which at once transformed the present defective tribunal into the sole supreme resort for suitors of all classes, without rival or co-ordinate authority. Such a Court must surely possess

that high dignity and paramount importance which will ensure all its acts being subject to wholesome public criticism, and leave its members without means or excuse for evading those great aims and objects that have induced the change.

Except within the small territorial jurisdiction of the Supreme Court, all classes and people are at present subject to the same Courts, and the same procedure in questions of civil right. With respect to criminal law, your petitioners would be well content, indeed rejoiced, to see the English criminal law and procedure (but very slightly modified perhaps) prevalent throughout all India and administered to all alike.

Your petitioners, therefore, fail to see how their views materially clash with the interests or reasonable wishes of their British fellow subjects, who are opposed to the amalgamation of the Queen's and East India Company's Supreme Courts of Judicature.

Your petitioners take the liberty of annexing to this petition (praying that it be considered a part thereof) a copy of a clause contained in a petition from this Association to Your Hon'ble House in the year 1852.

Finally : your petitioners humbly and most earnestly pray of your Hon'ble House ;

That your Hon'ble House will be pleased to take this their petition into your early and serious consideration, with a view to the speedy enactment of a law, by the imperial legislature, which may secure to these provinces, at least, the one paramount object and recommendation of the Reports of Her Majesty's Commissioners appointed to consider the re-

form of the judicial establishments, judicial procedure and laws of India, *viz.*, the amalgamation of Her Majesty's Supreme Court of judicature at Fort William with the Sudder Dewanny and Nizamut Adawlut of the East India Company.

And your petitioners as in duty bound will ever pray &c.

Extract from the Petition of the British Indian Association to the Hon'ble the House of Commons in the year 1852.

27. That, for these and other reasons, your petitioners are desirous that both the civil and criminal courts of the country should be remodelled; and that, instead of numerous, complicated, and defective systems, there should be courts guided by uniform rules of procedure, presided over by judges qualified by education and legal abilities, and having full authority over all classes of persons without exception. To this end your petitioners submit that the Sudder Court and the Supreme Court should be amalgamated as soon as possible; and that courts should be formed on the same principle for every district, having the same rules of procedure, with jurisdiction over all classes of the inhabitants both at the presidency towns and in the country. The local laws should be the guide of the new courts, except as to questions of marriage, inheritance, and so forth, in regard to which the laws of the parties should be followed as heretofore. The courts formed on the principle alluded to at the presidency towns, should be courts for the hearing of appeals from the lower courts, and for controlling the proceedings of those courts. In the same towns, civil courts of first instance should be established under single judges, which should also be courts of sessions, in which trials should be held with the aid of juries. At Agra where, though the seat of a new presidency, there is no Queen's

court, a chief court should be established, similar to the new courts at the presidency towns, consisting of a number of judges of the Sudder and one judge on the part of the Crown.

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